

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.11.2007

CORAM

THE HONOURABLE MR. JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR. JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

W.A. NO. 1184 OF 1999
W.P. NO.9014 OF 1994
AND
C.M.P. NO. 1161 OF 1999
W.M.P. NO. 13688 OF 1994

W.A. NO. 1184 OF 1999 :

The Chairman and Managing Director
Tamil Nadu Civil Supplies
Corporation Limited
42, Thamsamy Road
Kilpauk, Chennai - 10. .. Appellant/Petitioner

- Vs -

1. R.Kanagasundaram
2. The Deputy Commissioner
of Labour (Appeals)
Appellate Authority under the
Tamil Nadu Shops & Establishments
Act, 1947, Madras - 47. .. Respondents/Respondent

W.P. NO. 9014 of 1994 :

R.Kanagasundaram .. Petitioner

- Vs -

The Tamil Nadu Civil Supplies
Corporation Limited, rep. by its
Chairman and Managing Director
42, Thambu Swamy Road
Kilpauk, Chennai - 10.

2. Regional Manager
Dharmapuri Region
Tamil Nadu Civil Supplies
Corporation Limited
Dharmapuri.

.. Respondents

Writ Appeal filed against the order dated 13.02.1997 passed by learned single Judge in W.P. No.1945/1997 a writ of certiorari calling for the records connected with the order passed by the 2nd respondent in TSE Case No.36 of 93 on the file of the 2nd respondent and quash the said order dated 1st september 1996.

Writ Petition filed for the issuance of a writ of mandamus not to effect any recovery from the petitioner sought to be recovered vide order Ref. No.ROC/17815/90/E.7 dated 28th Dec., 1993 and Ref. No.17895/93/E.7 dated 7th April, 1994, pending disposal of the writ petition.

For Appellant : Mr. V.Selvanayagam

For Petitioner : Mr. V.Prakash, SC, for Mr.M.Ramamurthy

For Respondents: Mr. V.Prakash, SC, for Mr.M.Ramamurthy
for R-1 in W.A. No.1184/99
Mr. V.Selvanayagam for in W.P. No.9014/94

COMMON JUDGMENT

S.J.MUKHOPADHAYA, J.

This writ appeal has been preferred by the Chairman and Managing Director, Tamil Nadu Civil Supplies Corporation (hereinafter referred to as the 'Corporation') against order dated 13th Feb., 1997 passed by learned single Judge in W.P. No.1945/97. By the said order, learned single Judge having noticed that the enquiry proceeding suffered from so many infirmities, upheld the order dated 1st Sept., 1996, passed by the appellate authority.

So far as the writ petition is concerned, it has been preferred by the petitioner (1st respondent in the writ appeal) for issuance of a writ of mandamus directing the respondents not to give effect to any recovery from the petitioner pursuant to order Ref. No.ROC/17815/90/E.7 dated 28th Dec., 1993 and Ref. No.17895/93/E.7 dated 7th April, 1994.

2. As the relief in the writ petition is dependent upon the order to be passed in the writ appeal, both the writ appeal and the writ petition were heard together and are disposed of by this common judgment.

In the present appeal, the main plea taken by the counsel for the appellant is that the 2nd respondent, Deputy Commissioner of Labour-cum-Appellate Authority under the Tamil Nadu Shops and Establishments Act, 1947, (hereinafter referred to as the 'Act') has no jurisdiction to decide the appeal, the appellant having exempted from the Act.

3. The brief facts of the case is that the 1st respondent, who was appointed in the service of the Corporation on 3rd Oct., 1974, as Assistant Quality Inspector, was proceed departmentally in respect of ten charges vide charge memo dated 2nd April, 1991, relating to alleged illegalities committed in the year 1987. An enquiry officer was appointed and enquiry was made pursuant to which the enquiry report was submitted on 10th June, 1991. He having been held guilty in respect of certain charges, was dismissed from service vide order dated 22nd Dec., 1992, passed by the Chairman-cum-Managing Director of the Corporation. Against the said order, the 1st respondent preferred appeal under sub-section (2) to Section 41 of the Act, which was allowed by impugned order dated 1st Sept., 1996, passed by the 2nd respondent and affirmed by learned single Judge.

4. A copy of the so-called enquiry report submitted vide Manager (P&M) Rc.6802/91 SRM Rc.39997/90/M9 dated 10th June, 1991 is on the record. The said report was also perused by the appellate authority and discussed in his order. It will be evident from the charge memo dated 2nd April, 1991, that no list of evidence was cited. Neither the names of the witnesses were mentioned nor reference of any documentary evidence was mentioned therein. The charged employee had pleaded that no evidence was brought to his notice and it was not disputed by the Corporation either before the appellate authority or before the learned single Judge or before this Court. Statement of one administrative officer was noticed by the enquiry officer without disclosing the name of the officer to the charged employee.

5. The Corporation is guided by a service regulation. The charged employee, being a quality inspector, falls under Class-II under the classification made under Regulation 27. Regulation 2 of Chapter V prescribe the disciplinary authority to impose penalties on various class of employees. As per the regulation, the Managing Director is the competent authority to

impose punishment. But the proceeding was not initiated by the Managing Director, but by the Senior Regional Manager.

From the enquiry report it will be evident that the enquiry officer made four columns, as quoted hereunder :-

Sl. No.	Charges	Explanation	Enquiry Report	Finding
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Though the charges and explanation have been recorded, the statement of witness or the exhibits have not been discussed nor mentioned therein. The brief facts have been noticed by the enquiry officer against column 'Enquiry Report', but it is not clear as to from which source he could get such information. For example, against charge No.1, the enquiry officer recorded that the charged employee had been in-charge during the period 10th Oct., 1987 to 29th Jan., 1988 and was attending the movement work during that period. He received 600 gunnies, i.e., 200 gunnies on 9th Oct., 1987, 260 gunnies on 24th Oct., 1987 and 200 gunnies on 31st Oct., 1987, but it is not made clear as to from which evidence he could gather such information, though no such reference of such gunny bag details, etc., have been shown in the charge memo or against the column 'Explanation'. In similar manner all the charges have been mentioned and without recording the statement of any witness or giving reference to any documentary evidence the charges have been held to be proved.

6. The aforesaid fact was noticed by the appellate authority as also learned single Judge, who came to the definite conclusion that the enquiry was vitiated and set aside the order of dismissal. Learned counsel for the appellant Corporation could not give any satisfactory reply as to how such enquiry was conducted and was finding given without referring to the statement of witnesses or documentary evidence. Statement of one administrative officer was noticed against one of the charges, but, admittedly, the charged employee was neither informed that he is one of the witness nor he was asked to cross-examine him.

7. The only issue raised, as noticed above, is that the appellate authority had no jurisdiction to decide the appeal, as the Corporation falls within exempted category under the Tamil Nadu Shops and Establishments Act, 1947.

8. Learned counsel for the appellant referred to Section 4 (1) (c) and (f), as quoted hereunder :-

"4. Exemptions. -- (1) Nothing contained in this Act shall apply to --

* * * * *

(c) establishments under the Central and [State] Governments, local authorities, the Reserve Bank of India [a railway administration operating any railway as defined in clause (20) of article 366 of the Constitution] and cantonment authorities;

* * * * *

(f) establishments which, not being factories within the meaning of the Factories Act, 1948, are in respect of matters dealt with in this Act, governed by a separate law for the time being in force in the [State]."

According to learned counsel for the appellant, the Corporation is an establishment under the State Government and thus it is exempted. Further, it was submitted that the establishment of the Corporation not being a factory within the meaning of the Factories Act, 1948, it stands exempted under clause (f) of sub-section (1) to Section 4. Reliance was placed on a decision of learned single Judge of this Court in Tamil Nadu Civil Supplies Corporation Ltd., Chennai - Vs - Purushothaman. B. reported in 2003 (II) LLJ 715, wherein learned single Judge, giving reference to a Supreme Court decision in C.V.Raman, etc. - Vs - Bank of India, etc. reported in 1988 (1) LLJ 423, held that the State Government having deep and pervasive control over the Corporation, it has to be taken that such Corporation is an establishment under the State Government.

It was submitted that in view of the decision of learned single Judge in Tamil Nadu Civil Supplies Corporation (supra), the Corporation stands exempted u/s 4 (1) (c) of the Act.

9. We have noticed the judgment aforesaid and have doubt with regard to the finding of learned single Judge that the 'Corporation' is an establishment under the Government of Tamil Nadu.

So far as the Supreme Court decision in the case of C.V.Raman (supra) is concerned, that was a case of State Bank of India and that of some other nationalised banks. The question fell for consideration before Supreme court whether the State Bank and other nationalised banks are establishments under the Central Government for the purpose of Section 4 (1) (c) of the Tamil Nadu Shops and Establishments Act. Having noticed different provisions of Act 23 of 1955 (State Bank of India Act, 1955) and Act No.5 of 1970 (The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970), the Supreme Court held that the term "under" as referred to, leaves no manner of doubt that the State Bank of India and the Nationalised Banks are clearly establishments under the Central Government. The aforesaid finding was given taking into consideration the

different Act and the control of the Central Government on the State Bank of India and Nationalised Banks.

It was noticed that Reserve Bank of India together with such other persons and the shareholders of the State Bank under the provisions, have the powers to acquire and hold movable and immovable property, any increase in the issue capital beyond Twelve Crores and Fifty Lakhs Rupees could not have been made without the previous sanction of the Central Government. The appointment, promotion or increment contemplated by the provisions has to be confirmed by the Central Government. Section 18 contemplates that in the discharge of its functions, the State Bank shall be guided by such direction in the matter of policy involving public interest as the Central Government may in consultation with the Governor of the Reserve Bank and the Chairman of the State Bank give to it. If any question arises whether the direction relates to a matter of policy involving public interest, the decision of the Central Government has to be final.

Having noticed such provisions, including power of Central Government to liquidate the State Bank and to frame rules in regard to all matters, the Supreme Court came to a definite conclusion that State Bank of India was an establishment of Central Government for the purpose of Section 4 (1) (c). Similar finding was given with regard to the other Nationalised Banks.

10. In the present case, no pleading has been made by the Corporation as to in which manner it is guided and controlled by the State of Tamil Nadu. Even the State of Tamil Nadu is not a party to the writ petition to find out whether they accept the Corporation as its establishment. Without taking into consideration all the relevant provision, we are of the view that it is not open to the Court to give any finding whether the State Government is having deep and pervasive control over the Corporation and thus it is an establishment under the State of Tamil Nadu. From the judgment of the learned single Judge in Tamil Nadu Civil Supplies Corporation case (supra), it will be evident that the State of Tamil Nadu was not made a party in the said case nor all the relevant facts were discussed to give such finding. Therefore, we have expressed our doubt with regard to the finding of the learned single Judge, which we are not accepting, being not binding on Division Bench.

11. Under Section 4, while the categories of persons and establishments have been exempted under the Act, Section 6 empowers the State Government to exempt permanently or for specified period any establishment or a class of establishments,

a person or class or persons from all or any of the provisions of the said Act subject to such condition as the State Government may deem fit.

From paragraphs 5 and 6 of the judgment rendered in the Tamil Nadu Civil Supplies Corporation case (supra), it will be evident that the State Government issued one G.O. Ms. No.379 dated 17th Feb., 1984, in exercise of powers conferred u/s 6 of the Act. By the said notification, the State Government has exempted all the establishments under the control of the Tamil Nadu Civil Supplies Corporation in Tamil Nadu from all the provisions of the said Act, except Sections 11 (1), 25, 31, 41, 43, 45, 50 and 51 of the Act, subject to the conditions mentioned therein for a period of three years on and from 15th March, 1984.

If it is to be presumed that the Corporation is an establishment of the State Government and, thereby, stands exempted u/s 4 (1) (c) of the Act, it has not made clear as to what was the occasion for the State Government to issue a notification of exemption u/s 6 of the Act in respect of the same Corporation. In any case, such exemption had not been granted in respect of Section 41, under which an appeal could be entertained.

Further, from the notification, G.O. Ms. No.379 dated 17th Feb., 1984, issued u/s 6, it will be evident that the exemption was granted for a period of three years and was not applicable for Section 41 and, thereby, it could be argued, as suggested by the learned counsel for the respondent that the appellate authority had jurisdiction to pass order u/s 41 (2) of the Act.

12. We have already noticed that the order of punishment dated 22nd Dec., 1992, was issued without proper enquiry and in violation of rules of natural justice. The enquiry report is not based on evidence. The charged employee was held to be guilty without appreciation of any evidence. Thus, the order of dismissal was passed in violation of rules of natural justice and is illegal. It is argued by the counsel for the respondent that the Court should not exercise its power under Article 226 or under Clause 15 of the Letters Patent to restore such illegal order.

In this connection, one may refer to Supreme Court decision in the case of Chandra Singh - Vs - State of Rajasthan reported in (2003) 6 SCC 554, wherein the Apex Court held that the High Court or the Supreme Court, while exercising extra-ordinary jurisdiction under Article 226 or 32 of the Constitution, may not strike down an illegal order, although it would be lawful to

do so. In a given case, the High Court or Supreme Court may refuse to extend the benefit of a discretionary relief to the applicant.

In the present case, if we set aside the order passed by the appellate authority, it will restore an illegal order of dismissal from service. For the said reason also, we are not inclined to interfere with the order passed by the appellate authority or the learned single Judge.

Further, as the appellant had not taken the plea with regard to jurisdiction of the appellate authority, either before the appellate authority or before learned single Judge, it is not desirable to decide such issue in this appeal under Clause 15, particularly when no specific pleading has been made in respect of control of State of Tamil Nadu over the Corporation.

13. In the facts and circumstances, we are not inclined to interfere with the order dated 13th Feb., 1997 passed by learned single Judge in W.P. No.1945/97. There being no merit, the writ appeal is dismissed. In view of such dismissal of the writ appeal, no further orders are required to be passed in the writ petition, W.P. No.9014/94. The said case is closed. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

GLN

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Chairman and Managing Director
Tamil Nadu Civil Supplies
Corporation Limited
42, Thambamy Road
Kilpauk, Chennai - 10.

2. The Regional Manager
Dharmapuri Region
Tamil Nadu Civil Supplies
Corporation Limited
Dharmapuri.

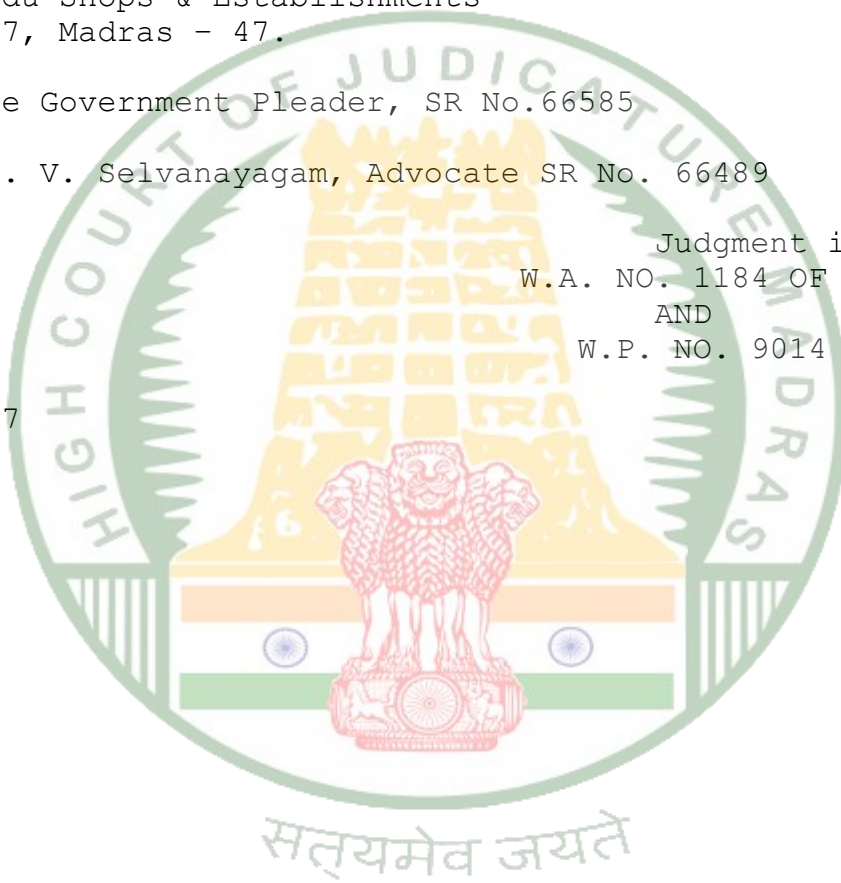
3. The Deputy Commissioner
of Labour (Appeals)
Appellate Authority under the
Tamil Nadu Shops & Establishments
Act, 1947, Madras - 47.

+ 1 cc to the Government Pleader, SR No.66585

+ 1 cc to Mr. V. Selvanayagam, Advocate SR No. 66489

Judgment in
W.A. NO. 1184 OF 1999
AND
W.P. NO. 9014 OF 1994

ASM(CO)
SR/13.11.2007



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